

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CR No.1263 of 2016

Date of decision: 11.4.2019

Lekh Ram

... Petitioner

versus

Gram Panchayat Uleta

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.J.S.Hooda, Advocate,
for the petitioner
Mr.Vishal Singh Chauhan, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the judgment dated 12.1.2016, passed by the learned Additional District Judge, Mewat, reversing that of the learned trial Court, i.e. the Civil Judge (Senior Division), Mewat, with the appellate Court thereby allowing the application filed by the respondent Gram Panchayat under Order 9 Rule 13 of the CPC, resulting in the judgment and decree earlier passed *ex parte* in favour of the present petitioner (plaintiff in the suit), being recalled.

2. The background of the matter is that the petitioner-plaintiff had instituted a suit seeking a declaration to the effect that he was owner of the suit property, with a further decree of perpetual permanent injunction sought, restraining the defendant in the suit from interfering in his possession thereof.

The said suit having been decreed *ex parte* as already stated, on 16.1.2012, eventually on 5.8.2012 the application under Order 9 Rule 13 of

the CPC was filed.

The learned trial Court after hearing the parties, framed the following issues for determination of the application:-

- “1. Whether the order dated 6.8.2011 and *ex parte* judgment and decree dated 16.1.2012 is liable to be set aside on the ground mentioned in the application? OPA
2. Whether application of the applicant is not maintainable? OPR
3. Whether application of the applicant is time barred? OPR
4. Relief.”

Eventually on the basis of evidence led by the parties, it was held that since the Gram Panchayat had complete knowledge of the suit, it having been proceeded against *ex parte* initially on 6.8.2011, after it had engaged a counsel to defend it, who thereafter did not appear, and further, not even a resolution in favour of any Sarpanch or Panch to represent the Gram Panchayat having been produced, there was no ground for allowing the application.

On the issue of limitation, relying upon a judgment cited before that Court, in Bhagmal and others vs. Kunwar Lal and others, 2010(4) LJR 507, it was held that a separate application seeking condonation of the delay in filing the application (under Order 9 Rule 13 CPC) was not required and that issue, consequently, was decided in favour of the applicant, i.e. the defendant-Gram Panchayat, inferring thereby that the delay stood condoned, though specifically it has not been stated so in the judgment of the learned Civil Judge dated 26.8.2015.

The said judgment having been appealed against, the learned Additional District Judge, in the impugned judgment, eventually held that the Gram Panchayat being a guardian of public property, Courts have to be extremely cautious “in granting injunction in favour of such person only on the ground that he is in possession of the property”. Therefore, citing a judgment of the Supreme Court in United Bank of India vs. Naresh Kumar and others, AIR 1997(SC) 3, it was held that the application deserved to be allowed.

While doing so, it was also observed that the previous Sarpanch/Panch of the Gram Panchayat did not appear in the suit and in fact had made a statement before the trial Court that he 'withdrew himself. In such a situation, the learned appellate Court held that in fact the learned trial Court was bound to have issued a notice to the Gram Panchayat (to enable it to appoint some other person to represent it and to defend the suit).

Yet further, it was found that the election to the Panchayat was held in 2010 and the Ex-Sarpanch, namely Bhudev, had ceased to be a Sarpanch of the Gram Panchayat and therefore, the suit of the plaintiff should have been decided on merits after hearing the defendant, and not *ex parte*.

Consequently, the judgment of the learned trial Court was set aside and the appeal of the Panchayat allowed, thereby also allowing the application under Order 9 Rule 13 of the CPC.

3. Before this court, Mr.Hooda, learned counsel for the petitioner, first submits that no application under Section 5 of the Limitation Act, 1963, having been filed by the respondent-Gram Panchayat along with its

application under Order 9 Rule 13 of the CPC, both the Courts below have wholly erred in ignoring that fact, and with the application admittedly having been filed well beyond the period of limitation of 30 days prescribed for that purpose, the application (under Order 9 Rule 13 CPC), should have been dismissed on that sole ground alone.

Mr.Hooda further submits that even in terms of Article 123 of the Schedule to the Limitation Act, 1963, at best an application seeking the setting aside of an *ex parte* decree (in terms of Order 9 Rule 13 of the CPC), has to be filed within 30 days from the date of the knowledge of such decree, if the defendant claims to have not been served of notice or summons issued in the suit, which in the present case the respondent-Gram Panchayat, cannot claim, it even having filed an application under Order 7 Rule 11 of the CPC during the initial part of the trial, obviously it therefore having been duly served of the notice issued to it.

Hence, he submits that the application under Order 9 Rule 13 CPC having been filed about 8 months after the judgment and decree was passed on 16.1.2012, in fact it would not be the second part of Article 123 that would be applicable but the first part itself, which states that the time for setting aside an *ex parte* decree runs out 30 days after the date of the decree.

Other than the basic statutory provision, he cites various judgments, including the one of the Supreme Court, in Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others. (2013) 12 SCC 649, wherein, after discussing the principles on condonation of delay, guidelines were also laid down by their Lordships, to the following

effect:-

“16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a *lis* on merits is seminal to justice dispensation system.
- b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

He next refers to the application filed by the respondent-Gram Panchayat under Order 9 Rule 13 CPC, to submit that other than the fact that no application under Section 5 of the Limitation Act was moved along with the aforesaid application, even in the application seeking setting aside

of the judgment and decree passed *ex parte*, no prayer was made seeking condonation of the delay in filing the application, which therefore is in a 'half hazard' (*sic* halfhearted) manner.

He next refers to another judgment of the Supreme Court. in P.K.Ramachandran vs. State of Kerala, 1997(4) RCR (Civil) 242, to submit that even in the case of a public authority (in that case the State of Kerala itself), a delay cannot be condoned without giving adequate reasons for the delay.

Next, he relies upon another judgment of the Supreme Court in Mahabir Singh vs. Subhash and others, 2008(1) RCR (Civil) 32, to submit that even in terms of Section 3 of the Limitation Act, 1963, “no Court shall have jurisdiction to entertain any suit or application if the same has been filed after expiry of the period of limitation. The High Court could not have ignored the said jurisdictional fact.”

Thus, he submits that with not even an application for condonation of delay having been filed by the respondent-Gram Panchayat along with the application under Order 9 Rule 13 CPC, and no explanation having been given even in that application, for the delay in filing it, the appellate Court wholly erred in allowing the application seeking that the judgment and decree pronounced *ex parte* be set aside, with even the trial court having erred on the aspect of limitation not coming in the way of the respondent-Gram Panchayat, though that Court of course dismissed the application under Order 9 Rule 13 CPC on the merits thereof.

4. Learned counsel for the respondent on the other hand submits that the *ex parte* decree actually arose out of the callousness/collusion of the

previous Sarpanch of the Gram Panchyat (fresh elections thereafter having taken place in the year 2016), and consequently the Gram Panchayat thereafter elected, moved the appropriate application, due to which the delay took place.

5. Having considered the matter, though Mr.Hooda, learned counsel for the petitioner, would obviously be correct in his contentions to the effect that no matter who the litigant may be, it has to act diligently to pursue/defend any litigation, and in case of any delay occurring at any stage, proper explanation for such delay must be given; however, in the circumstances of the case, where even after putting in an appearance and filing an application under Order 7 Rule 11 CPC, the Gram Panchayat chose not to defend the matter and it was only after fresh elections were held that the 'new Gram Panchayat' moved the application under Order 9 Rule 13 CPC, in my opinion, the issue of a delay in filing that application, in such circumstances, should not come in the way of defence of a suit, in which possibly public land may be involved.

Of course, whether it is the public land or not would be a matter to be determined by the learned trial Court itself, yet I find absolutely no reason to interfere with the impugned order passed by the learned appellate Court, allowing the application under Order 9 Rule 13 CPC, in the aforesaid circumstances.

Mr.Hooda is also obviously right that with not even an application in terms of Section 5 of the Limitation Act having been filed, and with no explanation given for the delay in the application filed under Order 9 Rule 13 CPC, such a nonchalant attitude would otherwise entail

dismissal of an application; however, to repeat, possibly public land being involved in the present *lis*, with a particular set of members of a Gram Panchayat not pursuing the litigation in earnest, and it having taken a new Gram Panchayat elected thereafter to follow it up, again I would not stand on the issue of limitation to allow a suit to be defended by a public body.

Other than the issue of delay, even on the merits of the application under Order 9 Rule 13, for the same reason, I would rather err in favour of a public body, as regards giving it a proper opportunity to defend a suit.

If any citation on the aforesaid principle is needed at all, the judgment of the Supreme Court in United Bank of India vs. Naresh Kumar and others AIR 1997(SC) 3, can be cited.

Consequently, finding no reason to interfere with the impugned order, this petition is dismissed.

However, it is made again clear that this Court has not opined in any manner on the merits of the suit of the petitioner, or the case of the respondent, and as to whether, firstly, the suit land is public land or not, and whether the petitioner otherwise has a case on merits in his favour or not, would be something which would be gone into by the learned trial court wholly on the basis of the evidence led before it.

At this stage, Mr.Hooda, even after the aforesaid order has been dictated, has submitted that at least costs should be awarded to the petitioner, considering the fact that not even an application seeking condonation of delay was filed along with the application under Order 9 Rule 13 CPC.

Though that delay would also be the fault of the previously elected body, or the counsel representing the Gram Panchayat before the trial Court, yet, since the petitioner has been made to suffer for that, costs of Rs.10,000/- are awarded to the petitioner on that count, (as a condition precedent to the Gram Panchayat being allowed to defend its suit, despite dismissal of the present petition).

11.4.2019
pk/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes